

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN ROBERT DEMOS,

Plaintiff,

v.

UNITED STATES DISTRICT COURT OF  
TACOMA WASHINGTON,

Defendant.

CASE NO. C22-5354 RSM

ORDER ADOPTING REPORT AND  
RECOMMENDATION

This matter is before the Court on the Report and Recommendation (“R&R”) of the Honorable Brian A. Tsuchida, United States Magistrate Judge. Dkt. #2. Plaintiff John Robert Demos failed to object to the R&R and instead filed a patently premature notice of appeal. Dkt. #3. Because that notice of appeal seeks review of an order that is clearly interlocutory in nature and does not divest this Court of jurisdiction, the Court considers and adopts the R&R, and dismisses this action.

Plaintiff is “a well-known abusive litigant.” Dkt. #2 at 1 (citing *Demos v. Storrie*, 507 U.S. 290, 291 (1993)). Recently, Plaintiff filed a “Motion for Clarification” with this Court, alleging that certain statutory and constitutional provisions were unconstitutionally vague and requesting that the Court clarify various questions that Plaintiff had related to those provisions. Dkt. #1-1. He sought to pursue his action *in forma pauperis* (“IFP”). Dkt. #1.

1 Judge Tsuchida reviewed Plaintiff's IFP application and proposed complaint. Judge  
2 Tsuchida initially noted that Plaintiff is limited, by at least two bar orders that were imposed  
3 because of his abusive litigation history, to filing no more than three IFP applications and  
4 proposed complaints per year. Dkt. #2 at 2 (citing *In re John Robert Demos*, MC91-269-CRD  
5 (W.D. Wash. Jan. 16, 1992); *In re Complaints and Petitions Submitted by John Robert Demos*  
6 (W.D. Wash. Dec. 15, 1982)). As of the date of Judge Tsuchida's review, Plaintiff had already  
7 filed at least six IFP applications and proposed complaints in 2022. *Id.* Judge Tsuchida further  
8 noted that Plaintiff made no effort to demonstrate "imminent danger of serious physical injury,"  
9 a showing that was required, under 28 U.S.C. § 1915(g), because of Plaintiff's history of  
10 frivolous, malicious, and unsupported claims. *Id.*

11 Based on his review of the matter, Judge Tsuchida concluded that Plaintiff could not  
12 proceed with this action and recommended that the Court deny his request for IFP status and  
13 dismiss the proposed complaint without prejudice. *Id.* at 2–3. Judge Tsuchida's R&R  
14 specifically informed Plaintiff that it was "not an appealable order" and that Plaintiff should not  
15 file a notice of appeal at least until the R&R and any objections were ruled upon by the  
16 Undersigned. *Id.* at 3. Plaintiff was also informed that any objections to the R&R had to be filed  
17 by June 2, 2022. *Id.*

18 Plaintiff did not object to the R&R. Instead, Plaintiff filed his premature notice of appeal  
19 on May 26, 2022. Dkt. #3. The Ninth Circuit Court of Appeals subsequently docketed Plaintiff's  
20 appeal, which remains pending. Dkt. #4 (referencing *Demos v. U.S. Dist. Ct.*, Case No. 22-  
21 35418 (9th Cir. 2022)).

22 Ordinarily, the filing of a notice of appeal is an event of jurisdictional significance.  
23 *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (per curiam). However, the  
24 filing of a defective notice of appeal that refers to a non-appealable interlocutory order does not

1 transfer jurisdiction. *Nascimento v. Dummer*, 508 F.3d 905, 908 (9th Cir. 2007). Rather, the  
2 district court “may disregard the purported notice of appeal and proceed with the case, knowing  
3 that it has not been deprived of jurisdiction.” *Ruby v. Sec’y of the U.S. Navy*, 365 F.2d 385, 389  
4 (9th Cir. 1966).

5 Plaintiff’s notice of appeal conflicts with the R&R’s clear instruction and is defective as  
6 it seeks review of an interlocutory order. The Court therefore concludes that it retains jurisdiction  
7 to consider Judge Tsuchida’s R&R.

8 Accordingly, and having considered the R&R, any objections or responses to the R&R,  
9 and the remainder of the record, the Court finds and ORDERS:

- 10 1. The Court ADOPTS the Report and Recommendation (Dkt. #2).
- 11 2. This case is DISMISSED without prejudice.
- 12 3. The Clerk is requested to send copies of this Order to Plaintiff and to Judge Tsuchida.

13 DATED this 28<sup>th</sup> day of June, 2022.

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17 RICARDO S. MARTINEZ  
18 CHIEF UNITED STATES DISTRICT JUDGE  
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